

AMENDED IN ASSEMBLY MARCH 25, 2003

AMENDED IN ASSEMBLY MARCH 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 506

Introduced by Assembly Member Maze
(Coauthors: Assembly Members Cox, Dutton, Haynes, La Suer,
Pacheco, Plescia, and Runner)
(Coauthor: Senator Johnson)

February 18, 2003

An act to amend Section 13823.11 of the Penal Code, relating to sexual assault victims.

LEGISLATIVE COUNSEL'S DIGEST

AB 506, as amended, Maze. Sexual assault victims: toxicology testing.

Existing law sets forth minimum standards for the examination and treatment of victims of sexual assault, including the collection of physical evidence.

This bill would provide, in addition and subject to the victim's refusal, that where indicated by the history of the contact, the victim's urine would be collected for toxicology purposes, to determine if drugs or alcohol were used in connection with the assault.

By imposing additional duties on local agencies, this bill would impose a state-mandated local program.

This bill would state findings and declarations by the Legislature, and declare the intent of the Legislature relative to this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the
2 following:

3 (a) Drug facilitated and acquaintance rape are prevalent and
4 insidious crimes.

5 (b) Drugs and alcohol are sometimes used by assailants to
6 incapacitate victims to facilitate the heinous crime of rape.

7 (c) Too often the evidence of drugging related to rape is lost,
8 due to lack of timely collection of toxicology evidence.

9 SEC. 2. It is the intent of the Legislature to encourage early
10 and accurate collection of forensic evidence in cases where drugs
11 or alcohol may have been used to incapacitate a victim in order to
12 facilitate the heinous crime of rape.

13 SEC. 3. Section 13823.11 of the Penal Code is amended to
14 read:

15 13823.11. The minimum standards for the examination and
16 treatment of victims of sexual assault or attempted sexual assault,
17 including child molestation and the collection and preservation of
18 evidence therefrom include all of the following:

19 (a) Law enforcement authorities shall be notified.

20 (b) In conducting the physical examination, the outline
21 indicated in the form adopted pursuant to subdivision (c) of
22 Section 13823.5 shall be followed.

23 (c) Consent for a physical examination, treatment, and
24 collection of evidence shall be obtained.



(1) Consent to an examination for evidence of sexual assault shall be obtained prior to the examination of a victim of sexual assault and shall include separate written documentation of consent to each of the following:

(A) Examination for the presence of injuries sustained as a result of the assault.

(B) Examination for evidence of sexual assault and collection of physical evidence.

(C) Photographs of injuries.

(2) Consent to treatment shall be obtained in accordance with usual hospital policy.

(3) A victim of sexual assault shall be informed that he or she may refuse to consent to an examination for evidence of sexual assault, including the collection of physical evidence, but that a refusal is not a ground for denial of treatment of injuries and for possible pregnancy and sexually transmitted diseases, if the person wishes to obtain treatment and consents thereto.

(4) Pursuant to Chapter 3 (commencing with Section 6920) of Part 4 of Division 11 of the Family Code, a minor may consent to hospital, medical, and surgical care related to a sexual assault without the consent of a parent or guardian.

(5) In cases of known or suspected child abuse, the consent of the parents or legal guardian is not required. In the case of suspected child abuse and nonconsenting parents, the consent of the local agency providing child protective services or the local law enforcement agency shall be obtained. Local procedures regarding obtaining consent for the examination and treatment of, and the collection of evidence from, children from child protective authorities shall be followed.

(d) A history of sexual assault shall be taken.

The history obtained in conjunction with the examination for evidence of sexual assault shall follow the outline of the form established pursuant to subdivision (c) of Section 13823.5 and shall include all of the following:

(1) A history of the circumstances of the assault.

(2) For a child, any previous history of child sexual abuse and an explanation of injuries, if different from that given by parent or person accompanying the child.

(3) Physical injuries reported.

1 (4) Sexual acts reported, whether or not ejaculation is
2 suspected, and whether or not a condom or lubricant was used.

3 (5) Record of relevant medical history.

4 (e) (1) If indicated by the history of contact, a female victim
5 of sexual assault shall be provided with the option of postcoital
6 contraception by a physician or other health care provider.

7 (2) Postcoital contraception shall be dispensed by a physician
8 or other health care provider upon the request of the victim.

9 (f) Each adult and minor victim of sexual assault who consents
10 to a medical examination for collection of evidentiary material
11 shall have a physical examination which includes, but is not
12 limited to, all of the following:

13 (1) Inspection of the clothing, body, and external genitalia for
14 injuries and foreign materials.

15 (2) Examination of the mouth, vagina, cervix, penis, anus, and
16 rectum, as indicated.

17 (3) Documentation of injuries and evidence collected.

18 Prepubertal children shall not have internal vaginal or anal
19 examinations unless absolutely necessary. This does not preclude
20 careful collection of evidence using a swab.

21 (g) The collection of physical evidence shall conform to the
22 following procedures:

23 (1) Each victim of sexual assault who consents to an
24 examination for collection of evidence shall have the following
25 items of evidence collected, except where he or she specifically
26 objects:

27 (A) Clothing worn during the assault.

28 (B) Foreign materials revealed by an examination of the
29 clothing, body, external genitalia, and pubic hair combings.

30 (C) Swabs and slides from the mouth, vagina, rectum, and
31 penis, as indicated, to determine the presence or absence of sperm
32 and sperm motility, and for genetic marker typing.

33 (D) If indicated by the history of contact, the victim's urine, for
34 toxicology purposes, to determine if drugs or alcohol were used in
35 connection with the assault. The victim shall be informed that he
36 or she is not responsible for any costs associated with the
37 toxicology testing. The individual volunteering for this test shall
38 not be subject to any sanctions based solely upon toxicology
39 findings, including, but not limited to, investigations regarding
40 probation, parole, parental rights, or violations of controlled

substances statutes. *Nothing in this paragraph shall alter any reporting obligations pursuant to Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4.*

(2) Each victim of sexual assault who consents to an examination for the collection of evidence shall have reference specimens taken, except when he or she specifically objects thereto. A reference specimen is a standard from which to obtain baseline information (for example: pubic and head hair, blood, and saliva for genetic marker typing). These specimens shall be taken in accordance with the standards of the local criminalistics laboratory.

(3) A baseline gonorrhea culture, and syphilis serology, shall be taken, if indicated by the history of contact. Specimens for a pregnancy test shall be taken, if indicated by the history of contact.

(4) (A) If indicated by the history of contact, a female victim of sexual assault shall be provided with the option of postcoital contraception by a physician or other health care provider.

(B) Postcoital contraception shall be dispensed by a physician or other health care provider upon the request of the victim.

(h) Preservation and disposition of physical evidence shall conform to the following procedures:

(1) All swabs and slides shall be air-dried prior to packaging.

(2) All items of evidence including laboratory specimens shall be clearly labeled as to the identity of the source and the identity of the person collecting them.

(3) The evidence shall have a form attached which documents its chain of custody and shall be properly sealed.

(4) The evidence shall be turned over to the proper law enforcement agency.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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